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FISCAL IMPACT STATEMENT

LS 6019

BILL NUMBER: HB 1168

NOTE PREPARED: Jan 8, 2008

BILL AMENDED:

SUBJECT: Confined Feeding Operations (CFOs) and Manure Haulers.

FIRST AUTHOR: Rep. Cheatham

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: *Disclosure Requirements.* The bill establishes good character disclosure requirements for CFOs and CAFOs. It allows the Department of Environmental Management (IDEM) to review and act on disclosed good character information.

Fees. The bill establishes construction and modification fees and annual fees and financial assurance requirements for operations.

CFO Inspection Fund. It establishes a CFO inspection fund.

Inspections. It requires IDEM to inspect operations at least one time each year. It also requires IDEM to revoke the approval for an operation if at least three violations of confined feeding or water pollution control laws occur at the operation in any two-year period.

State Chemist: The bill establishes a manure hauler certification program administered by the State Chemist.

Effective Date: Upon passage; July 1, 2008; January 1, 2009.

Summary of NET State Impact: The bill would increase personnel expenditures for IDEM and the State Chemist by an estimated \$1.3 M. Revenue would increase by an estimated \$450,000, of which \$310,000 would be for state dedicated funds and \$140,000 would be for the State Chemist. This would leave a net increase in expenses of \$913,230.

The funds and resources required above could be supplied through a variety of sources, including the

following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

IDEM reverted \$2.7 M in state General Fund appropriations in FY 2007. The State Chemist receives funding through Purdue University.

Explanation of State Expenditures: Summary. The bill would increase personnel expenditures by an estimated \$1.3 M, annually. See details below.

Details and Background Information.

Disclosure Requirements and Other Administrative Duties. A responsible party must submit to IDEM a disclosure statement and certain additional information. IDEM may investigate and verify the information. Based on findings, the commissioner may deny the application. The bill provides that the Solid Waste Management Board must adopt rules to administer the provisions of the bill. Additionally, IDEM must adopt rules, publish certain notices, and make certain determinations on fees for modifications. It is expected that IDEM will be able to cover any additional expenses associated with these provisions given existing resources and increased fee revenue. (See *Explanation of State Revenues* below.)

Inspections: The bill provides that IDEM must inspect each CFO or CAFO at least one time each year. Currently, there are approximately 625 CAFOs in the state and 1,592 CFOs. For FY 2007, IDEM conducted 274 inspections on CAFOS and 307 inspections on CFOs, for a total of 581 inspections or 26% of the total. (“Inspections” included instances of paperwork follow-up, compliance assistance, and construction.)

In 2007, IDEM maintained a staff of 17 Agriculture and Solid Waste Inspectors. These inspectors also inspect municipal landfills, industrial waste disposal sites, construction/demolition debris disposal sites, transfer stations for municipal waste, open dumps, trucks, transfer stations, waste tire processing sites, and waste tire dumps. Approximately 50% of an inspector’s time was spent inspecting CAFOs and CFOs.

Currently, 50% of the 17 inspectors’ time is spent conducting 581 inspections on 26% of all CAFOs and CFOs. If the 17 inspectors devoted 100% of their time to inspecting facilities, 1,162 facilities could be inspected. Given this figure, the total number of inspectors required to inspect 2,217 facilities would equal about 30, minus the 8.5 existing inspectors, or 22 new inspectors. The number of inspectors could be reduced if inspection territories were reduced relative to the scope of existing inspections. New personnel costs are estimated to be \$1.3 M, annually.

CFO Inspection Fund. The bill establishes the CFO Inspection Fund to permit IDEM to inspect CFOs and CAFOs. IDEM administers the fund. Money in the fund is annually appropriated to IDEM for expenses of administering the fund. Revenue estimates generated for the fund are cited below. (See *Explanation of State Revenues*.)

[For FY 2007, IDEM reverted over \$2.7 M in state General Fund revenues. Total reversions for all funds equaled \$18.9 M. IDEM cited 778 violations in FY 2007. Fines and penalties totaled \$61,550. No criminal actions were filed.]

Penalty Provision: The bill provides that disclosure statements are subject to the penalty for perjury, a Class D felony. A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately 10 months. However, any additional expenditures are likely to be small.

State Chemist. The bill provides that the State Chemist must establish the Manure Hauler Certification Program to take effect January 1, 2009. The State Chemist must by rule establish the terms, conditions, application requirements, financial assurance requirements, and fees for certification; record keeping requirements for certified manure haulers; and standards for revocation of a certification based on violations. The amount of the fee may not be more than necessary to recover the cost of establishing and operating the certification program. The State Chemist may approve training and education programs that are developed by educational institutions or entities.

The anticipated cost for the program is \$120,000 per year beginning in FY 2009. During FY 2009, the State Chemist's Office will promulgate rules. Beginning with the implementation of the program, which will likely be in 2010, additional expenses for the State Chemist's Office will include the addition of a Data Entry Position, related support/benefit costs, computer equipment and related supplies, along with additional costs associated with adding responsibility to an existing administrative position and an Engineer Specialist who will assume supervisory responsibility for the program. Costs will also involve continued IT support to design, develop, test, and implement the program.

Explanation of State Revenues: *Summary-* Overall, the bill will result in an increase in revenue of an estimated \$450,000 per year, approximately \$310,000 of which would be deposited in dedicated funds used to finance IDEM operations and \$140,000 would be deposited with the Purdue University Treasurer (State Chemist). The state General Fund would not be affected.

Background.

Permit Fee. Under existing law, applicants for approval of a CAFO under the National Pollutant Discharge Elimination System (NPDES) must pay \$50 for an initial, renewal, modification, or variance permit. This fee is deposited into the Environmental Management Permit Operation Fund. In 2007, 21 CAFOs received a NPDES permit, generating an estimated \$1,050. The bill provides that if a CAFO is issued an alternative permit (see below), the applicant does not have to pay the \$50 NPDES fee, which will result in a reduction in revenues to the Permit Operation Fund of \$1,050 per year.

The bill clarifies fees for construction and modifications for CFOs and CAFOs. CAFOs that were previously paying \$50 for a NPDES permit would pay the \$100 fee similar to the fee paid by CFOs. This provision will generate approximately \$2,010 each year, which will be deposited in the CFO Inspection Fund.

In 2007, IDEM received 52 CFO applications for construction permits, which generated \$5,200 which was deposited in the Environmental Permit Operations Fund. Revenue generated by these permits will be deposited in the CFO Inspection Fund under the bill.

Permit Fee Details- The bill establishes the following fees payable to IDEM that apply to CFOs and CAFOs

based on the number of each type of confined animal. Fees for Category A and B must be paid every 5 years. Fees for Category C and D must be paid every year. A CFO that provides for a number of animals less than the minimum is subject to fees prescribed for Category A.

Category A	\$250
Category B	\$500
Category C	\$250
Category D	\$500

Categories for purposes of the above fees are as follows.

Category A	\$250 Fee Every 5 Years	Number	Annualized Revenue
Mature cows	300 to 499	27	\$1,350
Other cattle	300 to 699	67	\$3,350
Swine at least 55 lbs	600 to 999	348	\$17,400
Swine less than 55 lbs	600 to 4,999	540	\$27,000
Chickens	30,000 to 74,999	35	\$1,750
Turkeys	30,000 to 39,999	32	\$1,600
Ducks	30,000 to 59,999	3	\$150
Sheep	600 to 4,999	2	\$100
Horses	not applicable	6	0
	Total	1,060	\$52,700

Category B \$500 Fee Every 5 Years		Number	Annualized Revenue
Mature cows	500 to 699	19	\$1,900
Other cattle	700 to 999	17	\$1,700
Swine at least 55 lbs	1,000 to 2,499	607	\$60,700
Swine less than 55 lbs	5,000 to 9,999	16	\$1,600
Chickens	75,000 to 124,999	32	\$3,200
Turkeys	40,000 to 54,999	72	\$7,200
Ducks	60,000 to 99,999	1	\$100
Sheep	5,000 to 9,999	0	0
Horses	not applicable	0	0
Total		764	\$76,400

Category C \$250 Fee Every Year		Number	Annual Revenue
Mature cows	700 to 1,999	21	\$5,250
Other cattle	1,000 to 2,999	23	\$5,750
Swine at least 55 lbs	2,500 to 7,499	333	\$83,250
Swine less than 55 lbs	10,000 to 19,999	3	\$750
Chickens	125,000 to 399,999	49	\$12,250
Turkeys	55,000 to 174,999	10	\$2,500
Ducks	100,000 to 299,999	0	0
Sheep	10,000 to 19,999	0	0
Horses	500 to 999	0	0
		439	\$109,750

Category D \$500 Every Year		Number	Annual Revenue
Mature cows	at least 2,000	27	\$13,500
Other cattle	at least 3,000	5	\$2,500
Swine at least 55 lbs	at least 7,500	94	\$47,000
Swine less than 55 lbs	at least 20,000	0	0
Chickens	at least 400,000	30	\$15,000
Turkeys	at least 175,000	0	0
Ducks	at least 300,000	0	0
Sheep	at least 20,000	0	0
Horses	at least 1,000	1	\$500
Total		157	\$78,500

IDEM must determine by rule a fee that is a reduced percentage of the fee for each of two or more CFOs or CAFOs for which efficiency in inspecting the multiple facilities results from proximity, common ownership, or biosecurity protocols. IDEM must revoke the approval for a CFO if at least three violations of water pollution control rules or laws occur in any two-year period. A CAFO subject to a fee is not subject to NPDES permit fees. IDEM must deposit fees in the CFO Inspection Fund.

Revenue generated from the fees is estimated as follows.

Annualized Revenue Generated by Fees on CFOs and CAFOs	
Category	New Revenue
A	\$52,700
B	\$76,400
C	\$109,750
D	\$78,500
Total Revenue	\$317,350
Total number of all categories was 2,420. Some may represent combination farms.	

Fees must be deposited in the CFO Operation Inspection Fund.

Repeal of CAFO NPDES Fee. Under existing law, a large CAFO has to have either an individual NPDES permit or a general NPDES permit. The bill repeals IC 13-18-20-11.5, which provides an initial or renewal fee of \$100 for a general CAFO NPDES and a \$250 fee for an individual CAFO NPDES initial or renewal

permit. With respect to the \$100 general fee for CAFO NPDES, there are 413 facilities to which the fee applies which generates \$41,300 every five years, or \$8,260 annually. With respect to the individual permits, there are 11 facilities to which the \$250 fee applies which generates \$2,750 every five years, or \$550 annually. The total reduction in fees would equal \$8,810 annually.

State Chemist. If the State Chemist were to institute a \$100 annual fee for the program, the program could generate around \$140,000 given that there are an estimated 1,400 haulers and applicators who might be involved. If the program was administered in a manner that is comparable to the pesticide program, a portion of the fee, which would likely be \$10, would be used to support education programs. There are no appropriations in the bill. Any fees collected would be deposited with the Purdue University Treasurer.

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. The bill also provides that a person who hauls manure in violation of the provisions of the bill commits a Class C infraction. The maximum judgment for a Class C infraction is \$500, which would be deposited in the state General Fund. However, any additional revenues would likely be small.

Bonding. Applicants must submit to IDEM evidence of financial assurance payable to IDEM and conditional upon faithful performance and compliance with environmental laws. This provision may result in additional revenue if the applicant violates requirements.

Explanation of Local Expenditures: Applicants who apply for approval to construct a CAFO or to modify a CFO or CAFO on land that is undeveloped or for which a valid existing approval has not been issued must notify the county executive. This provision should have minimal impact on the county.

Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small.

State Agencies Affected: IDEM, State Chemist, Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies, and counties.

Information Sources: Sandra Flum, IDEM, 317-233-9479; Bruce Palin, Assistant Commissioner for the Office of Land Quality, 233-6591; IDEM's Legislative Report on CFO/CAFO Activities, October 2007; IDEM website <http://www.in.gov/idem/agriculture/livestock/cfo/index.html#cfos>.

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